

Proceedings prepared by computerized realtime
translation

A P P E A R A N C E S

For the Government: James T. Lacey
Kimberly E. Hopkins
Assistant U.S. Attorneys

For Ghermon Tucker: Dan Cooper
Cooper & Udall PC

For Jerome Ranger: Stephen Jonathan Young
Williamson & Young

For Ja'Cory Ranger: Bradley James Armstrong
Armstrong Law Office

1 P R O C E E D I N G S

2 THE COURT: Show the absence of the jury,
3 presence of all counsel and the defendants.

4 The jurors have asked two questions. The
5 first question reads, "Please provide a copy of
6 Section 841 of Title 21 of United States Code and
7 841(A) and 846 of Title 21 and Section 924(C)."

8 My response to that is going to be: You
9 already have what you need from those portions of
10 the code in your instructions.

11 The second question was, "The fourth
12 paragraph," talking about conspiracy instruction,
13 "'Third, one of the members,'", does 'members' refer
14 to the defendants or any member of the conspiracy?

15 What do you think the answer should be,
16 Mr. Lacey and Ms. Hopkins?

17 MR. LACEY: I know what the answer should
18 be. Members of a conspiracy are all persons, not
19 just named defendants, but all persons who were
20 part of the group of criminal associates. That's
21 the law.

22 THE COURT: Mr. Cooper?

23 MR. COOPER: I think it should be the same
24 as the first question. They have all the
25 instructions, including the answer to that

1 question.

2 MR. LACEY: I don't think that's the case.

3 MR. ARMSTRONG: I agree. I agree that
4 they've been instructed, and I don't think they're
5 entitled to any further instruction on that issue.

6 THE COURT: Mr. Young?

7 MR. YOUNG: I'm with Mr. Cooper and
8 Mr. Armstrong, Your Honor.

9 THE COURT: You're mumbling.

10 MR. YOUNG: I'm sorry. I'm with
11 Mr. Cooper and Mr. Armstrong, Your Honor.

12 THE COURT: The instruction that they're
13 referring to reads, "One of the members of the
14 conspiracy performed at least one overt act for the
15 purpose of carrying out the conspiracy, with all of
16 you agreeing on the particular overt act that you
17 find was committed." That seems to be what they're
18 talking about.

19 Mr. Lacey?

20 MR. LACEY: Your Honor, yes.

21 THE COURT: Yes?

22 MR. LACEY: Yes. I'm responding to your
23 question.

24 THE COURT: Okay.

25 MR. LACEY: The law is clear. Any member

1 of a conspiracy is accountable for everyone that's
2 in the conspiracy, and we have not just the named
3 defendants, but all the Mexican parties that were
4 part of the conspiracy. Any one of them could have
5 done the overt act as well, and the jury
6 instructions really don't make that clear, and I
7 think that we have an obligation to help them
8 pursue the facts of this case based upon the law
9 and clarifying it when there is a question such as
10 this that, obviously, is elementary to us but not
11 to them.

12 And I think it's incumbent upon the Court
13 and counsel to let that happen, to educate the jury
14 a little further, because it's not addressed in the
15 jury instructions.

16 THE COURT: My proposed answer is going to
17 be: "Members" means anyone who you determine to be
18 a member of the conspiracy proven beyond a
19 reasonable doubt.

20 And so that they can read what I'm saying,
21 I'll have Mo write it because my writing is
22 horrible.

23 So are you typing it?

24 THE CLERK: Uh-huh.

25 (Off the record.)

1 THE COURT: So that the record is clear,
2 show that each of the defense counsel, Mr. Young,
3 Mr. Armstrong, Mr. Cooper, objects to the Court
4 defining the word "member" for them.

5 (Off the record.)

6 THE COURT: "For Counts 3 and 4, the
7 guidance says, 'Second, the defendant knowingly
8 possessed one Ruger model P95 nine caliber pistol,
9 SN 317-318591; Taurus,' et cetera.

10 "Does this imply the defendant was aware
11 of every gun listed or at least one of the guns
12 listed?"

13 Mr. Young, what do you think I should say?

14 MR. YOUNG: I think it was covered
15 adequately in the instructions, Your Honor.

16 MR. ARMSTRONG: I agree.

17 MR. COOPER: I agree.

18 MR. LACEY: Your Honor, perhaps -- the
19 last sentence of the instruction addresses that
20 issue.

21 THE COURT: I know it does.

22 MR. LACEY: And so perhaps just direct
23 them back to the instruction again, if you want to
24 be generic. Otherwise, if you want to be more
25 specific, direct them to the last sentence.

1 THE COURT: I'm going to say, please refer
2 back to the instructions.

3 MR. LACEY: Okay.

4 THE COURT: And once again, I'll have Mo
5 write it so that they can read it.

6 When she goes back, I've asked her to
7 inquire also what time they want to come back
8 tomorrow.

9 Show that Mr. Cooper may not be able to
10 come forthwith if he's summoned, and if he can't,
11 Mr. Armstrong will cover for him, and that's with
12 Mr. Tucker's permission.

13 THE CLERK: 9:15.

14 THE COURT: 9:15. Come back tomorrow at
15 9:15.

16 Tell them to come back tomorrow.

17 (Proceedings concluded in this matter.)
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C E R T I F I C A T E

I, Erica R. Grund, do hereby certify that I took the machine shorthand notes in the foregoing matter; that the same was transcribed via computer-aided transcription; that the preceding pages of typewritten matter are a true, correct, and complete transcription of those proceedings ordered, to the best of my skill and ability.

Dated this 2nd day of January, 2013.

s/Erica R. Grund
Erica R. Grund, RDR, CRR
Official Court Reporter